Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

LARRY JARRETT, WYMAN JARRETT,
KAREN KRAMER and STEVE BLALOCK,

Petitioners,

v.

STATE OF GEORGIA, EX REL,
FREDERICK D. BRIGHT, DISTRICT ATTORNEY,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the State of Georgia can constitutionally deny petitioners' procedural due process rights, guaranteed to them pursuant to the Fifth and Fourteenth Amendments of the Constitution of the United States, and Art. I, § I, ¶ I, of the Constitution of the State of Georgia, by use of the Georgia Controlled Substances Civil Forfeiture Act, O.C.G.A. § 16-13-49, *as applied* to petitioners in this case, to deny them the opportunity to amend their timely answers, and further dismissing their answers and amended answers, and enter forfeiture by default?

2. Whether petitioners' procedural due process rights have been violated by the State's failure to hold a hearing to show the basis for forfeiture pursuant to *Thorp v. State*, 264 Ga. 712?

3. Whether petitioners' property can be forfeited, when no nexus whatsoever exists between the property to be condemned and the contraband alleged to belong to any petitioner, and no hearing on the nexus issue was ever conducted. See *Austin v. U.S.*, 509 U.S. ___, 125 L.Ed.2d 488, 509, 113 S.Ct. 2801 (1993)?

4. Whether the Georgia Controlled Substances Civil Forfeiture Act, O.C.G.A. § 16-13.49 et seq, *as applied* in this case, violates the proscription against excessive fines contained in the Eighth Amendment of the United States Constitution?

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PETITION FOR WRIT OF CERTIORARI

Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock, Petitioners, pray for a writ of certiorari to review and reverse the judgment of the Georgia Supreme Court, denying the Petition for Certiorari on May 17, 1996, as well as the judgments of the Georgia Court of Appeals (entered in this case on March 11, 1996), and the trial court, entered April 26, 1995.

OPINIONS AND ORDERS BELOW

An order of forfeiture and distribution of property pursuant to O.C.G.A. § 16-13-49(o) (4) was granted against your petitioners in the Superior Court of Jasper County, State of Georgia, by Judge William A. Prior, Jr., dated April 26, 1995. (5a). Petitioners appealed to the Georgia Court of Appeals, which affirmed on March 11, 1996. 220 Ga. App. 559 (1a).

Thereafter, your petitioners petitioned the Georgia Supreme Court for certiorari, which petition was denied May 17, 1996, without opinion. 266 Ga. ___, (14a). Petitioners filed a motion for reconsideration in the Supreme Court of Georgia, which was denied on June 14, 1996. (15a).

JURISDICTION

This petition for a writ of certiorari is filed within an extension of time within which to file a petition for a writ of certiorari, which request for extension was filed within

90 days of the date of the Supreme Court of Georgia's denial of the motion for reconsideration herein. The extension by Associate Justice Anthony M. Kennedy was granted up to and including November 11, 1996. (Application No. A-202). Jurisdiction is invoked and conferred by 28 U.S.C. § 2102(c), and 28 U.S.C. § 1254 through 28 U.S.C. § 2104.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The pertinent provisions of the Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States and Art. I, § 1, ¶ 1 of the Constitution of the State of Georgia are set forth in the Appendix. (16-19a).

STATEMENT

A. FACTS

This is a civil drug forfeiture case. Substantial property of Petitioner Larry Jarrett was seized at the time of his arrest on October 4, 1994, including 52 vehicles, $78,000.00 in cash, and personal property. Two tracts of land owned by Larry Jarrett were also seized, as well as a tract of land which belonged to Wyman Jarrett, and personal property was seized belonging to Karen Kramer and Steve Blalock.

On December 8, 1994, a Complaint for Forfeiture action was filed. On January 3, 1995, Petitioners filed their Answers. On January 24, 1995, the State filed a

Motion for Judgment of Forfeiture and Disposition of Property. On February 27, 1995, Petitioners filed Amended Answers to the Complaint of Forfeiture. On March 23, 1995, the State filed a Motion to Dismiss Defendant's Amended Answer to Complaint for Forfeiture. The trial court, thereafter, entered an Order of Forfeiture and Distribution of Property pursuant to O.C.G.A. § 16-13-49(o) (4), essentially by default.

Larry Jarrett, for example, was convicted of simple possession of 5.2 grams of a methamphetamine and possession of a dangerous firearm. The conviction for the simple possession offense, which is still on appeal, is based upon the 5.2 grams of methamphetamine supposedly found by a Jasper County Deputy Sheriff in Larry Jarrett's business trailer, which was not located on his own property, but on the property of his father Wyman Jarrett. The 5.2 grams of methamphetamine for which Larry Jarrett was convicted of simple possession, were allegedly found by a Jasper County Deputy Sheriff, after the Georgia Bureau of Investigation had thoroughly searched the business trailer in question, including using the services of a team of well trained drug detection canines. No drugs were found as a result of this thorough and unremitting search. Then, for some reason, a Jasper County Deputy Sheriff was dispatched back out to the trailor after the fine toothed comb search had been unsuccessful, and found 5.2 grams of methamphetamine by simply opening up a cabinet.

Karen Kramer and Wyman Jarrett have not even been indicted, and it is not expected that they will be indicted. Steve Blalock has pled guilty to a felony drug offense.

Your Petitioners contend the first issue in this case is whether or not they received procedural due process, when the trial court found that an insufficient Answer was equivalent to no Answer at all, and that even assuming arguendo that the original Answer was insufficient, that it furthermore could not be amended. The second and third issues are whether petitioner's due process rights have been violated by a failure to hold any hearing re: the nexus between the property and the offense alleged or the proportionality between the property seized and the offense alleged. The fourth issue before this Court is whether or not there have been excessive fines levied herein. The amount of property forfeited is grossly out of proportion to the offense that Larry Jarrett, for example, was convicted of, i.e., simple possession of 5.2 grams of methamphetamine and possession of a dangerous firearm.

On the first issue, the principal Georgia Supreme Court case involved is *State of Georgia v. Alford*, 264 Ga. 243. The principal statutes involved include O.C.G.A. § 9-11-81, noting that it (the civil procedure act) applies to special statutory proceedings such as the Forfeiture Act in question, unless in conflict with the statutory proceeding. O.C.G.A. § 9-11-15 specifically provides that an Answer can be amended, and O.C.G.A. § 16-13-49, the Forfeiture Act, does not specifically exclude O.C.G.A. § 9-11-15, having to do with the amendment of pleadings, from the Forfeiture Act.

Therefore, it is Petitioners' principal contention that they did not receive procedural due process when the trial court and courts of appeals held, or did not review,

that an Answer may not be amended in a civil forfeiture proceeding.

Your Petitioners show that prior to this case, neither the statute nor case law of the State of Georgia had ever held that an (assuming arguendo) insufficient Answer was not amendable.

If the present Order is allowed to stand without further review and the denial of Petitioners' procedural due process rights is not remedied, Larry Jarrett, for example, stands to lose 52 vehicles, $78,000.00 in cash, personal property, two tracts of land, and other personal property, based, to date, on the conviction (currently itself on appeal) of Mr. Larry Jarrett of simple possession of 5.2 grams of a methamphetamine and possession of a dangerous firearm. Karen Kramer and Wyman Jarrett have not even been indicted.

This forfeiture by improper default further violates the excessive fines clause of the Eighth Amendment. A consideration of the inherent gravity of the offense compared with the harshness of the penalty clearly shows that there is no relationship whatsoever between the forfeiture of property and the 5.2 grams of methamphetamine involved, nor any nexus, because the 5.2 grams were not even found on Larry Jarrett's property or any property that he owned. The principal cases on these points include *Thorp v. State of Georgia*, 264 Ga. 712, and *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 509, 113 S.Ct. 2801 (1993).

B. PROCEDURAL HISTORY

On December 8, 1994, a complaint for forfeiture action was filed. On January 3, 1995, petitioners filed their answers. On January 24, 1995, the state filed a motion for judgment of forfeiture and disposition of property. On February 27, 1995, petitioners filed amended answers to the complaint of forfeiture. On March 23, 1995 the State of Georgia brought a motion to dismiss petitioners' amended answers to complaint for forfeiture pursuant to O.C.G.A. § 16-13-49. The trial court entered an order of forfeiture and distribution of property pursuant to O.C.G.A. § 16-13-49(o) (4), essentially by default, despite petitioners' answers, amended answers, and the State's own statement that "If the State's motion is granted, Judge, in this case that will not result in a forfeiture of all this property. We are asking their Answers be dismissed and that their Amendments be dismissed, but what will happen is if Your Honor grants the motions today, we will have to — we will suggest to the Court that we convene a distribution hearing under 16-13-49 (u) (4) (C). That section authorizes the Court to approve distribution of proceeds after a recommendation from the district attorney. We are going to ask for an evidentiary hearing at that time to come before the Court and put up evidence either from the investigators — investigation, GBI, financial investigative section is involved in this case, and others, but put up evidence ex parte to establish a basis for forfeiture of each item of property. Any item that we can't establish a basis for, Judge, will be returned, assuming that there is a rightful owner and a good claim as to property. And it will be at that time that the State will address the various *Thorp*

factors. That will be in the distribution hearing." (Transcript of Hearing before Judge Prior, April 3, 1995, p. 7-8) (20a). The State of Georgia further stated "[w]e will have to comply with *Thorp* at a later time . . . " and "[t]he State is not asking for forfeiture at this time. As I said before earlier, I think we will have to have an evidentiary hearing to show the basis for forfeiture of various items of property under *Thorp*. That can be scheduled at a later time. What we are doing right now is asking the Court to dismiss the Answers and dismiss the Amendments." (Transcript of Hearing before Judge Prior, April 3, 1995, p. 57, 63) (20a).

The Georgia Court of Appeals affirmed that decision on March 11, 1996 (1a), the Georgia Supreme Court denied certiorari on May 17, 1996 (14a), and petitioners' motion for reconsideration was denied by the Georgia Supreme Court on June 14, 1996 (15a).

REASONS FOR GRANTING THE PETITION

1. Petitioners' constitutional procedural due process rights have been violated by the use of the Georgia Controlled Substances Civil Forfeiture Act, O.C.G.A. § 16-13-49, *as applied* to petitioners in this case.

2. Petitioners' constitutional procedural due process rights have been violated by the State's failure to hold a hearing to show the basis for forfeiture pursuant to *Thorp v. State of Georgia*, 264 Ga. 712.

3. Petitioners' procedural due process rights have been violated, where no nexus exists between the property to be condemned and the contraband alleged to belong to any petitioner, and no hearing on the nexus

issue has ever been conducted pursuant to *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 509, 113 S.Ct. 2801 (1993).

4. Petitioners' constitutional right not to have an excessive fine imposed against them pursuant to the Eighth Amendment of the United States Constitution have been violated by the State's application of O.C.G.A. § 16-13-49 to them and the failure of the State to hold any hearing pursuant to *Thorp v. State of Georgia*, 264 Ga. 712.

I. PETITIONERS' CONSTITUTIONAL PROCEDURAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED BY THE USE OF THE GEORGIA CONTROLLED SUBSTANCES CIVIL FORFEITURE ACT, O.C.G.A. § 16-13-49, *AS APPLIED* TO PETITIONERS IN THIS CASE.

This Court has recently and consistently affirmed the persistence of Civil Forfeiture Act laws, *Bennis v. Michigan*, 516 U.S. ___, 134 L.Ed.2d 68, 76, 116 S.Ct. ___ (1996), but has not condoned the trampling of citizens' procedural due process rights in the prosecution of such cases. *United States v. Good Real Property*, 510 U.S. ___, 126 L.Ed.2d 491, 114 S.Ct. 492 (1993), *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 113 S.Ct. 2801 (1993).

After the trial court dismissed petitioners' Answers and Amended Answers, it and the Court of Appeals incorrectly interpreted the Georgia Supreme Court's decision in *State of Georgia v. Alford*, 264 Ga. 243 (1994). It is well established that the rules of the Civil Practice Act apply to O.C.G.A. § 16-13-49. O.C.G.A. § 9-11-81 specifically states that "[t]his chapter [CPA] shall apply to all special statutory proceedings except to the extent that

specific rules of practice and procedure in conflict herewith are expressly prescribed by law. . . . " O.C.G.A. § 16-13-49 is a specific statutory proceeding; however, the statute does not specifically exclude the applicability of the Civil Practice Act, particularly those provisions having to do with the amendment of pleadings – O.C.G.A. § 9-11-15. **Further, no case has ever held that a forfeiture answer cannot be amended. O.C.G.A. § 16-13-49 does not state it cannot be amended, and the C.P.A, which is specifically applicable herein, allows amendment.**

The case of *Alford* was decided under a different set of facts than the one that is before the Court at this time. In *Alford*, the Georgia Supreme Court was faced with the question of whether or not the property owner could succeed in a Motion to Dismiss against the State for failing to meet the 60 day hearing requirement of O.C.G.A. § 16-13-49(o) (5). The Georgia Supreme Court found proper the denial of "Alford's motion to dismiss the State's complaint as the 60-day requirement of § 16-13-49(o) (5) is dependent upon the filing of an answer in strict compliance with the special pleading requirements of § 16-13-49(o) (3)." *State of Georgia v. Alford*, 264 Ga. 243, 245 (2) (b), supra.

In the case at bar, none of the Petitioners made a motion to dismiss based on the State's failure to have a hearing within 60 days. The State and the Petitioners both agreed to a 60 day time limit in which to hold a hearing in this matter. The Georgia Supreme Court in *State of Georgia v. Adams*, 264 Ga. 842, again found that the 60 day time period of O.C.G.A. § 16-13-49(o) (5) does not begin to run unless there is a filing of a sufficient answer. What the Georgia Supreme Court held in both *Adams* and *Alford*

was that the 60 day time limit of § 16-13-49(o) (5) *does not begin to run* unless there is a sufficient answer filed under § 16-13-49(o). *Neither* case stands for the proposition that an insufficient answer is not amendable. The Court of Appeals in this case (220 Ga. App. 559, 560, appendix 3a) quotes *Alford*, " '[i]t is well established that the legislature may impose pleading requirements in special statutory proceedings in addition to those found in the Civil Practice Act and in such cases, the sufficiency of a pleading must be judged in light of the specific statutory requirements. *Dorsey v. Dept. of Transp.*, 248 Ga. 34 (279 SE2d 707) (1981); *Bragg v. Bragg*, 225 Ga. 494, 495 (170 SE2d 29) (1969).' " But *Alford* does not state that the Civil Practice Act does not apply to the amendments at issue in this case. In fact it does apply (see O.C.G.A. § 9-11-81) and is apparently the only safeguard against this forfeiture statute. The pleading must be judged in light of both the specific pleadings requirement and the Civil Practice Act. There has ***never*** been any case law that establishes that an answer that is not in strict compliance is the same as ***no*** answer. Therefore, petitioners should have been allowed to amend their answers in compliance with the Civil Practice Act and O.C.G.A. § 16-13-49, instead of having both their answers and amended answers dismissed.

The Georgia Court of Appeals read law into *Alford* that patently was not there, holding that "failure to comply with the strict pleading requirements prescribed in OCGA § 16-13-49(o) (3) when answering an in rem forfeiture petition is equivalent to filing no answer at all [,]" (appendix, 3a) citing *State of Georgia v. Alford*, 264 Ga. 243, 245 (2)(b), as authority. Nothing of the sort was ever held

or so stated by the majority opinion of the Georgia Supreme Court in *Alford*, much less in section 2(b). The idea that an insufficient answer is no answer at all was broached by Chief Justice Benham's special concurrence. Though the Georgia Court of Appeals adopted the idea from the special concurrence, it did not follow through with Justice Benham's concomitant procedure. Justice Benham reasoned that the majority should also hold that "the filing of the answer tolls the running of the 30-day period in which to file an answer, should an attack on the sufficiency of the answer be launched by the State." *Alford*, at 248, supra. This reasoning by Justice Benham is in conformity with O.C.G.A. § 9-11-8(f), 9-11-15, and 9-11-81, unlike the Court of Appeals' decision, which selectively used Chief Justice Benham's words for the benefit of the State, when the whole purpose of Chief Justice Benham's concurrence was intended to reach the *opposite* result, and the proper result under 9-11-8(f), 9-11-15 and 9-11-81.

O.C.G.A. § 9-11-15(a) provides that "[a] party may amend his pleadings as a matter of course and without leave of court at any time before the entry of a pre-trial order." The Petitioners amended their answer within the proper time allowed by O.C.G.A. § 9-11-15(a). There had been no entry of a pre-trial order, nor had there been any completion of discovery in this matter. The Georgia Court of Appeals in *State of Georgia v. Croom, et al.*, 168 Ga. App. 145 (1983), discussed the use of a pre-trial order in a forfeiture case. In that case, the court allowed the *State* to amend its pleadings before the entry of a pre-trial order. Innocent victims of the State's use of the forfeiture statute should at least be entitled to the same level playing field.

In exercising its judgment in whether to allow the amendment of pleadings, "the judge should balance possible prejudice to the nonmoving party with the moving party's reason for delay." *State of Georgia v. Croom, et al.*, 168 Ga. App. 145 (1983); *Leslie, Inc. v. Solomon,* 141 Ga. App. 673(1) (234 SE2d 104). The court in *Croom* further stated that the right to amend pleadings only ceases upon the entry of a pre-trial order. A pre-trial order was never entered into in the case at bar. At the time the State's motion was filed the parties were still in the discovery phase of the litigation.

In the case of *State of Georgia v. Walls, et al.*, 202 Ga. App. 899, (415 SE2d 921) (1992), a gambling forfeiture action, the Georgia Court of Appeals found that the State could amend their forfeiture complaint in compliance with O.C.G.A. § 9-11-15(a), even if it was after the 30 days from which the District Attorney received notice of the seizure. They reasoned that the Civil Practice Act applied to forfeiture actions and even though they are specific statutory proceedings, the CPA would only *not* apply *if* they were expressly in conflict. O.C.G.A. § 9-11-81. Since there is not an express conflict with this statutory proceeding, O.C.G.A. § 9-11-15(a) applies to this case and the Court of Appeals incorrectly decided the merits of this case.

In the case of *McMichen v. State of Georgia,* 209 Ga. App. 169, (433 SE2d 92) (1993), the defendant made a motion to dismiss the State's forfeiture complaint for the State's failure to have the complaint verified by an authorized agent at the time of the initial filing. The court found that

> [a]lthough the initial complaint filed by the state did not contain a verification of an authorized agent of the state, the state subsequently amended its forfeiture complaint to include the verification of a representative of the Villa Rica Police Department. In *State of Ga. v. Jackson*, 197 Ga. App. 619, 623(2), (399 SE2d 88) (1990), this court concluded that '[s]ince OCGA § 16-13-49 does not declare a penalty for lack of strict compliance, nor otherwise prohibit the procedure followed by the State, the statute is regarded as directory under these circumstances and substantial compliance is sufficient. [Cits.]' *McMichen* at 170.

The court allowed the State to amend its complaint to substantially comply with the statute and denied the defendant's motion to dismiss. If the State can amend its complaint to substantially comply with the statute, then the Petitioners are therefore allowed to amend their answers after the 30 day period to also substantially comply with the statute. Further, O.C.G.A. § 16-13-49(o)(3) does not declare a penalty for lack of strict compliance, rather, § 16-13-49(o)(4) states that if **no** answer has been filed by the expiration of the 30 days, then the court shall order a disposition of the property. There is no case law or code section that states that an answer that is not in strict compliance is the same as no answer.

The Court of Appeals suggested in its decision in this case that the Georgia Supreme Court in *Alford* found that a filing of an insufficient answer is equivalent to filing **no** answer at all. The Georgia Supreme Court did not state that an insufficient answer is the same as filing **no**

answer, only that an insufficient answer cannot begin to run the 60 day time period under § 16-13-49(o) (5).

The Court of Appeals decided that an "insufficient answer" is the same as no answer and if the petitioners filed amended answers that they cannot relate back to the first answers to resurrect the claim. O.C.G.A. § 9-11-15(c) states that "[w]henever the claim or defense asserted in the amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." The only reasoning set forth by the Court of Appeals that the amendment does not relate back to the filing date of the original complaint is that O.C.G.A. § 16-13-49(o) (4) states "[i]f at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section." However, the Court of Appeals does not explain why the relation back doctrine does not apply, other than an insufficient answer is the same as no answer. It follows that since the CPA does apply to O.C.G.A. § 16-13-49, that the Petitioners' Amended Answers relate back to the January 3, 1995 filing date of the original Answers.

The Court of Appeals incorrectly decided that the original Answers which were filed by the Petitioners were incomplete and failed to comply with O.C.G.A. § 16-13-49. O.C.G.A. § 9-11-8(f) states, "[a]ll pleadings shall be so construed as to do substantial justice." In the case of *Cotton v. Federal Land Bank*, 246 Ga. 188, 191 (269 SE2d 422) (1980), the court stated that "pleadings are intended to serve as a means of arriving at fair and just

settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end." The Court of Appeals in this case tried to interpret the *Alford* case as an all-encompassing rule of law that would not allow petitioners to amend pleadings. Again, there is no law or statute that states parties cannot amend their pleadings herein. This would defeat the purpose of the adversarial judicial system. The CPA states that pleadings are construed to do substantial justice. If the ruling by the Court of Appeals were to stand, there would be no substantial justice in this case. The Petitioners substantially complied with the special statutory requirements of O.C.G.A. § 16-13-49 fulfilling the requirement of O.C.G.A. § 9-11-8(f) in their original answer. However, the Petitioners also show that they fully complied with all of the requirements of O.C.G.A. § 16-13-49 in their Amended Answers to the Complaint for Forfeiture. The trial court and Georgia Court of Appeals' erroneous interpretation of *Alford* and § 16-13-49, as applied, denied petitioners procedural due process rights herein, essentially forfeiting their property by default by dismissing their answers, which were amendable, and were amended as well.

II. PETITIONERS' CONSTITUTIONAL PROCEDURAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED BY THE STATE'S FAILURE TO HOLD A HEARING TO SHOW THE BASIS FOR FORFEITURE PURSUANT TO *Thorp v. State of Georgia*, 264 Ga. 712.

Petitioners' procedural due process rights and rights to be free from excessive fines have been violated by the

failure of the trial court to have a hearing pursuant to *Thorp v. State of Georgia*, despite the State of Georgia's recognition that such a hearing was necessary. See Transcript p. 7-8, 57, 63. As recognized in *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 509, 113 S.Ct. 2801 (1993) punitive forfeiture acts are "subject to the limitations of the Eighth Amendment's Excessive Fines Clause."

III. PETITIONERS' PROCEDURAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED WHERE NO NEXUS EXISTS BETWEEN THE PROPERTY TO BE CONDEMNED AND THE CONTRABAND ALLEGED TO BELONG TO ANY PETITIONER, AND NO HEARING ON THE NEXUS ISSUE HAS EVER BEEN CONDUCTED PURSUANT TO *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 509, 113 S.Ct. 2801 (1993).

The nexus between the property forfeited herein and the activity proscribed is even farther afield than the nexus found in *Bennis v. Michigan*, which itself was found insufficient by Justices Stevens, Souter and Breyer in *Bennis*, in what was ultimately a narrow 5 to 4 affirmance. 516 U.S. ___, ___ 134 L.Ed.2d 68, 86, 116 S.Ct. ___, ___ (1996). In Justice Stevens dissent, he noted, "the car in this case, however, was used as little more than an enclosure for a one-time event, effectively no different from a piece of real property. By the rule laid down in our recent cases, that nexus is insufficient to support the forfeiture here." In the case at hand there is no nexus between the 5.2 grams of methamphetamine (which neither the GBI nor its talented drug dog squad could find) and the property forfeited. The 5.2 grams were not found on

Larry Jarrett's tracts of land, nor were they found in any of his 52 vehicles, many of which were not even drivable. At best, it appears that this case should be controlled not by *Bennis v. Michigan*, inasmuch as the property forfeited was not the scene of the proscribed conduct, but by *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 505, 113 S.Ct. 2801 (1993) where this Court noted that it had previously "rejected government's attempt to extend that reasoning to conveyances used to transport illegal liquor. See *One 1958 Plymouth Sedan v. Pennsylvania*, 380 US 693, 699, 14 LEd2d 170, 85 SCt 1246 (1965)." In that case, the court noted: " 'There is nothing even remotely criminal in possessing an automobile.' ibid. The same, without question, is true of the properties involved here, [a mobile home and auto body shop] and the Government's attempt to characterize these properties as "instruments" of the drug trade must meet the same fate as Pennsylvania's effort to characterize the 1958 Plymouth Sedan as 'contraband.' " As Justice Scalia recognized in his separate concurrence in part and concurrence in judgment to *Austin v. United States*, 509 U.S. ___, 125 L.Ed.2d 488, 509, 113 S.Ct. 2801 (1993), "an in rem forfeiture goes beyond the traditional limits that the Eighth Amendment permits if it applies to property that cannot properly be regarded as an instrumentality of the offense – the building, for example, in which an isolated drug sale happens to occur. Such a confiscation would be an excessive fine. The question is not *how much* the confiscated property is worth, but *whether* the confiscated property has a close enough relationship to the offense." In the case at hand, the 52 vehicles, $78,000.00 in cash, personal property, and tracts of land owned by Larry Jarrett have absolutely no nexus or relationship to the alleged possession of 5.2 grams of

methamphetamine whatsoever, inasmuch as the methamphetamine was not found on or in any of the vehicles or property of Larry Jarrett – it was found in a trailer on his father, Wyman Jarrett's, land. Pursuant to *Austin v. United States,* there is clearly no nexus or relationship between the property taken and the offense alleged.

IV. PETITIONERS' CONSTITUTIONAL RIGHTS NOT TO HAVE AN EXCESSIVE FINE IMPOSED AGAINST THEM PURSUANT TO THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION HAVE BEEN VIOLATED BY THE STATE'S APPLICATION OF O.C.G.A. § 16-13-49 TO THEM AND THE FAILURE OF THE STATE TO HOLD ANY HEARING PURSUANT TO *Thorp v. State of Georgia,* 264 Ga. 712.

Petitioners show further that there have been excessive fines in this case, in violation of the Eighth Amendment. *Thorp v. State of Georgia,* 264 Ga. 712 (450 SE2d 416) (1994). The Petitioners in this case contend that the forfeiture in this case was excessive and in violation of the Eighth Amendment. A forfeiture as disproportionate as that contemplated in this case is clearly punitive, and "subject to the limitations of the Eighth Amendment's Excessive Fines Clause". *Austin v. United States,* 509 U.S. ___, 125 L.Ed.2d 488, 505, 113 S.Ct. 2801 (1993). The first element "requires a consideration of the inherent gravity of the offense compared with the harshness of the penalty." *Thorp,* at 717. In the present case there were 52 vehicles taken, $78,000, thousands of dollars worth of personal property, numerous acres of real property and

other items too numerous to mention. There were only two indictments handed down which were against Larry Jarrett and Steve Blalock; the State could not even find enough evidence to indict either Ms. Kramer or Wyman Jarrett. Mr. Jarrett was convicted of simple possession of 5.2 grams of a methamphetamine and possession of a dangerous firearm. This alleged violation of the law does not impose the harsh penalty of forfeiting all of petitioners' personal and real property.

The second element is whether or not the property was close enough to render it guilty. *Thorp* at 717. Here, there were no drugs found on Larry Jarrett's property.

The third element of *Thorp* is "whether the criminal activity involving the defendant property was extensive in terms of time and/or spatial use." *Thorp* at 717. The State would have this Court believe that Mr. Larry Jarrett was involved in criminal activity for an extended period of time and that all of Larry Jarrett's personal and real property was purchased with drug money. However, the fact is that Mr. Jarrett was only convicted of possessing 5.2 grams of methamphetamine. Larry Jarrett denies that he is guilty, and his case is on appeal.

Since none of the factors in *Thorp* have been met, this Court should find that this taking was in violation of the Excessive Fines Clause of the Eighth Amendment, especially in conjunction with Section II, *supra*, wherein the trial court did not even hold a hearing on these issues, despite the State's recognition that such was required.

To illustrate how the trial court's order offends not only due process in not having a hearing, but the excessive fines clause as well, Larry Jarrett stands to lose 52

vehicles, approximately $78,000.00 in cash, personal property, tracts of land, and other personal property based on a conviction (itself on appeal) of simple possession of 5.2 grams of methamphetamine, the amount of which is illustrated by the following packet of approximately 5.2 grams of sugar.

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review and reverse the judgments below. In the alternative, and recognizing that this Court cannot take every meritorious case that is presented to it due to the sheer volume of Petitions for Writ of Certiorari presented to it, petitioners request that this Court, in the alternative, reverse and direct the trial court in this case to proceed with a hearing pursuant to *Thorp v. State of Georgia* and *Austin v. United States* to determine whether or not there is any reasonable relationship or nexus whatsoever between the property confiscated, and the drug activity alleged, and whether or not this taking constitutes an excessive fine.

Respectfully submitted this 7 day of November, 1996.

GREER, KLOSIK and
DAUGHERTY

ROBERT J. MCCUNE
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Karen Kramer and Steve Blalock
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Georgia Court of Appeals

A95A1996. JARRETT et al. v. STATE OF GEORGIA.

McMURRAY, Presiding Judge.

On December 8, 1994, the State filed an in rem forfeiture complaint, pursuant to OCGA § 16-13-49, seeking to forfeit property that was seized by law enforcement officers after Larry Jarrett was arrested and charged with possession of methamphetamine with intent to distribute, possession of amphetamine, two counts of possession of illegal firearms, possession of a vehicle with an altered vehicle identification number and possession of dangerous drugs.[1] The State requested (in its prayer for relief) that, "in the event no claimant files an answer in accordance with the specific statutory requirements of OCGA § 16-13-49 (o) (3), that the Court order the immediate disposition of the seized and forfeited property in accordance with subsection (o) (4)."

Claimants Larry Jarrett, Wyman Jarrett and Karen Kramer were personally served with the forfeiture petition on December 9, 1994, and claimant Steve Blalock was served with the forfeiture petition on December 22, 1994, via publication pursuant to OCGA § 16-13-49 (o) (2) (B). On January 3, 1995, claimants each filed an answer to the petition for forfeiture.

On January 24, 1995, the State filed motions for judgment of forfeiture and disposition of property, asserting

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[1] The property that was seized and allegedly acquired via illegal means or used to facilitate Larry Jarrett's illegal activities includes 52 motor vehicles, 27 firearms, over 220 articles of personal property, over $70,000 in United States currency, several checks and several bank accounts. Four tracts of land are listed in the style of the forfeiture complaint.

that claimants' answers did not satisfy the specific pleading requirements of OCGA § 16-13-49 (o) (3) and that, since the time for filing an appropriate answer expired, disposition of the seized property must be ordered pursuant to OCGA § 16-13-49 (o) (4). Thereafter, the State agreed with claimants to continue the hearing on this motion from February 1, 1995, to April 3, 1995. In the meantime, however, claimants each filed, on February 27, 1995, an amended answer to the forfeiture complaint. The State responded on March 23, 1995, with motions to dismiss the amended answers, pointing out that the amended answers filed by claimants Larry Jarrett, Wyman Jarrett and Kramer were filed 81 days after they were served and that claimant Blalock's amended answer was filed 67 days after he was served with the forfeiture complaint.

After a hearing, the trial court entered an order (which includes detailed findings of fact and conclusions of law) granting the State's motions for judgment of forfeiture and disposition of property and motions to dismiss the amended answers. This appeal followed. *Held*:

1. Claimants contend that answers to forfeiture petitions are governed by the Civil Practice Act and that, as such, substantial compliance with the pleading requirements of OCGA § 16-13-49 (o) (3) is all that is required. Claimants then go on and assert that the answers they filed within 30 days after service of the State's forfeiture petition substantially complied with the pleading requirements of OCGA § 16-13-49 (o) (3). This contention is without merit.

"It is well established that the legislature may impose pleading requirements in special statutory proceedings in addition to those found in the Civil Practice Act and in such cases, the sufficiency of a pleading must be judged in light of the specific statutory requirements. *Dorsey v. Dept. of Transp.*, 248 Ga. 34 (279 SE2d 707) (1981); *Bragg v. Bragg*, 225 Ga. 494, 495 (170 SE2d 29) (1969)." *State of Ga. v. Alford*, 264 Ga. 243, 245 (2) (a) (444 SE2d 76). Further, failure to comply with the strict pleading requirements prescribed in OCGA § 16-13-49 (o) (3) when answering an in rem forfeiture petition is equivalent to filing no answer at all. See *State of Ga. v. Alford*, 264 Ga. 243, 245 (2) (b), supra. In the case sub judice, we have carefully examined the claimants' answers and find that none was filed in compliance with the specific pleading requirements of subsections (D), (E) and (F) of OCGA § 16-13-49 (o) (3). Specifically, the answers fail to set forth the date, identity of transferor and circumstances of the claimants' interests in the property and fail to set forth the specific provision of OCGA § 16-13-49 relied on in asserting that the property is not subject to forfeiture, with all essential facts supporting each such assertion. Further, the answers were neither verified "under penalty of perjury" as required by OCGA § 16-13-49 (o) (3), nor set forth any address at which the claimants will accept mail in compliance with OCGA § 16-13-49 (o) (3) (B). The answers only included the address of claimants' attorneys. Thus, claimants' first pleading that claimants filed in response to the State's forfeiture petition amounted to no answers at all. *State of Ga. v. Alford*, 264 Ga. 243, 245 (2) (b), supra.

2. Alternatively, claimants contend that their amended answers complied with OCGA § 16-13-49 (o)

and related back to their first answers so as to resurrect their claims. This argument is without merit. "If at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section." OCGA § 16-13-49 (o) (4).

The trial court did not err in granting the State's motions for judgment of forfeiture and disposition of property and motions to dismiss the amended answers.

Judgment affirmed. Andrews and Blackburn, JJ., concur.

DECIDED MARCH 11, 1996 – CERT. APPLIED FOR.

Forfeiture. Jasper Superior Court. Before Judge Prior.

Greer, Klosik & Daugherty, John F. Daugherty, Deborah M. Carter, for appellants.

Michael J. Bowers, Attorney General, Lance K. Hiltbrand, for appellee.

IN THE SUPERIOR COURT OF JASPER COUNTY
STATE OF GEORGIA

STATE OF GEORGIA
ex rel.

FREDRIC D. BRIGHT
DISTRICT ATTORNEY
OCMULGEE JUDICIAL CIRCUIT

Plaintiff,

v.

ALL THAT TRACT OR PARCEL OF LAND DESCRIBED AS LOT NO. 15, 16TH LAND DISTRICT, JASPER COUNTY, GEORGIA, CONTAINING 8.95 ACRES WITH ONE DOUBLE WIDE MOBILE HOME LOCATED THEREON AND KNOWN AS Rt. 3, BOX 337-4A, MONTICELLO, GEORGIA; ALL THAT TRACT OR PARCEL OF LAND DESCRIBED AS LOT NO. 39, 16TH LAND DISTRICT, JASPER COUNTY, GEORGIA, CONTAINING 3.0 ACRES AND KNOWN AS Rt. 3, BOX 315, HIGHWAY 212, MONTICELLO, GEORGIA; ALL THAT TRACT OR PARCEL OF LAND DESCRIBED AS LAND LOT NO. 15, 17TH LAND DISTRICT, JASPER COUNTY, GEORGIA, CONTAINING 17.72 ACRES WITH ONE DOUBLE WIDE MOBILE HOME AND ONE SINGLE WIDE MOBILE HOME AND KNOWN AS Rt. 3, BOX 377-

CIVIL ACTION NO.
94CV12-228

(Filed April 26, 1995)

A, MONTICELLO, GEORGIA; ALL THAT TRACT OR PARCEL OF LAND DESCRIBED AS LAND LOT NO. 15, DISTRICTS 16 AND 17, JASPER COUNTY, GEORGIA, CONTAINING 1.4 ACRES WITH ONE SINGLE WIDE MOBILE HOME AND KNOWN AS Rt. 3, BOX 377-4A, MONTICELLO, GEORGIA; APPROXIMATELY SEVENTY-ONE THOUSAND FOUR HUNDRED SEVENTY-EIGHT DOLLARS AND TWENTY-EIGHT CENTS ($71,478.28) IN U.S. CURRENCY; NATIONSBANK CHECKING ACCOUNT #074-98192289 CONTAINING THREE THOUSAND NINE HUNDRED NINETY-EIGHT DOLLARS AND SIX CENTS ($3,998.06); NATIONSBANK MONEY MARKET ACCOUNT #074-58426107 CONTAINING FOURTEEN THOUSAND TWO HUNDRED EIGHT-NINE DOLLARS AND FIFTY-FIVE CENTS ($14,289.55); CHECK #6331 FROM THE FIRST COLONIAL BANK OF ALPHARETTA, CHECKING ACCOUNT #100-01-13, IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS ($25,000), MADE PAYABLE TO LARRY JARRETT FROM J.E. FUNDERBURKE; CHECK #1154,

BANK OF MONTICELLO ACCOUNT #10-47-182, IN THE AMOUNT OF SIX THOUSAND DOLLARS ($6,000), MADE PAYABLE TO LARRY JARRETT FROM RALPH JARRETT, SR; CHECK #1143 FROM THE NAVY FEDERAL CREDIT UNION IN ATHENS, GA, ACCOUNT #11-28-264-700, IN THE AMOUNT OF SEVEN HUNDRED DOLLARS ($700), MADE OUT TO LARRY JARRETT FROM DAVID M. STOWE; NUMEROUS MOTOR VEHICLES, AS DESCRIBED IN EXHIBIT B, ATTACHED HERETO; NUMEROUS FIREARMS, AS DESCRIBED IN EXHIBIT C, ATTACHED HERETO; OTHER MISCELLANEOUS PERSONALTY, AS DESCRIBED IN EXHIBIT D ATTACHED HERETO; AND METHAMPHETAMINE, MARIJUANA AND OTHER CONTROLLED SUBSTANCES

Defendant Property, *in rem.*

IN RE: PROPERTY CLAIMED BY LARRY JARRETT, WYMAN JARRETT AND RALPH JARRETT

ORDER OF FORFEITURE AND DISTRIBUTION OF PROPERTY PURSUANT TO OCGA §16-13-49(o)(4)

1.

The District Attorney for the Ocmulgee Judicial Circuit filed a COMPLAINT FOR FORFEITURE in this

matter on December 8, 1994, pursuant to the *in rem* civil forfeiture provisions of OCGA §16-13-49(o). Claimants Larry Jarrett, Wyman Jarrett, and Karen Kramer were personally served the following day. Claimant Dianne Melton was personally served on December 15, 1994. All other claimants were served by publication, pursuant to OCGA §16-13-49(o)(2)(B), the second publication having been on December 22, 1994.

2.

On January 3, 1995, Claimants Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock each filed an ANSWER TO COMPLAINT FOR FORFEITURE PURSUANT TO OCGA §16-13-49. On January 5, 1995, Claimant Dianne Melton filed her PLEA, ANSWER AND DEFENSE OF CLAIMANT DIANNE MELTON TO PLAINTIFF'S COMPLAINT FOR FORFEITURE IN REM. Answers were submitted on behalf of other claimants as well, but will not be addressed herein. All answers were filed within 30 days of service, as provided by OCGA §16-13-49(o)(3).

3.

On January 24, 1995, the State filed pleadings styled MOTION FOR JUDGEMENT OF FORFEITURE AND DISPOSITION OF PROPERTY as to each of the above claimants, asserting that the answer filed by each was legally insufficient and did not satisfy the specific pleading requirements set out in OCGA §16-13-49(o)(3), and requesting forfeiture pursuant to OCGA §16-13-49(o)(4).

4.

On February 27, 1995, Claimants Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock each filed pleadings captioned "AMENDED ANSWER TO COMPLAINT FOR FORFEITURE PURSUANT TO OCGA §16-13-49". These pleading were filed approximately 81 days after service of the Complaint on Larry Jarrett, Wyman Jarrett and Karen Kramer, and approximately 67 days after service in the case of Steve Blalock.

5.

On March 23, 1995, the State filed a MOTION TO DISMISS DEFENDANT'S AMENDED ANSWER TO COMPLAINT FOR FORFEITURE PURSUANT TO OCGA §16-13-49 as to each amended answer.

6.

This Court consolidated all motions for a hearing and scheduled the hearing for Monday, April 3, 1995, at 1:00 p.m., at the Jasper County Courthouse. All parties were notified of the hearing a minimum of a week in advance.

7.

On Friday, March 31, 1995, Claimants Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock each filed a DEFENDANT'S RESPONSE TO STATE'S MOTION FOR JUDGMENT OF FORFEITURE AND DISPOSITION OF PROPERTY AND TO STATE'S MOTION TO DISMISS DEFENDANT'S AMENDED ANSWER TO COMPLAINT FOR FORFEITURE PURSUANT TO OCGA §16-13-49. The

Court was apprised that the State was served with copies of these pleadings the same day.

8.

On Friday, March 31, 1995, Claimant Dianne Melton filed a CLAIMANT'S FIRST AMENDMENT to her earlier answer. This pleading was filed approximately 104 days after service. The Court was apprised that the State was not served with a copy of this pleading until immediately before the hearing the following Monday afternoon.

9.

On Monday, April 3, 1995, this Court conducted a hearing on the motions filed in this case, and heard argument of counsel for all parties as to the various issues before the Court. After said hearing, this Court elected to take the matter under advisement. After consideration of the pleadings submitted in this matter, the argument of all counsel, all authorities cited in pleadings and argument, and authority researched by the Court, the following findings are made:

> (A) The *in rem* forfeiture proceeding provided for by OCGA §16-13-49 is a special statutory proceeding in which the legislature has imposed specific pleading requirements in addition to those found in the Civil Practice Act. In a proceeding pursuant to this section, the sufficiency of pleadings and their timeliness must be measured in light of the specific statutory requirements set out therein, and are not controlled by the general provisions of the CPA. *State v. Alford*, 264 Ga. 243, 245 (1994).

(B) When measured against the provisions of the code section, the answers filed by Claimants Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock are insufficient, in that they fail to comply with the specific pleading requirements set out in OCGA §16-13-49(o)(3). The answers are "devoid of legal or factual allegations in support of [their] standing to assert a claim to the property and the nature and extent of [their] interest in the property" and equally devoid of any factual allegations in support of any defense to the forfeiture action, including innocent ownership. *State v. Alford*, 264 Ga. 243 (1994); see also *Mitchell v. State*, ___ Ga. App. ___, #A95A0833, April 12, 1995. No other defensive pleadings were filed by or on behalf of these claimants during the 30-day period after service set out in the statute for the filing of defensive pleadings.

(C) An "insufficient" answer which fails to strictly comply with the specific pleading requirements set out in OCGA §16-13-49(o)(3) is equivalent to no answer at all, and is subject to dismissal by the Court. *Alford*, supra. In this connection, OCGA § 16-13-49(o)(4) provides the following:

> "If at the expiration of the period set forth in paragraph (3) of the subsection no answer has been filed, the court *shall order* the disposition of the seized property as provided for in this Code section." [Emphasis supplied].

The state promptly filed a motion petitioning the Court to dismiss the claimants' insufficient answers and to grant judgement pursuant to this subsection.

(D) The purported amended answers filed by all claimants were filed subsequent to the time the statute provides that an answer *must* be filed, and subsequent to the State's filing of its Motion for Judgement of Forfeiture and Disposition of Property. They were thus filed too late to serve as answers, and cannot "relate back" so as to cure the deficiencies of the earlier, insufficient answers. See *State v. Britt-Caribe*, 154 Ga. App. 476 (1980); *Dorsey et al. v. Department of Transportation*, 248 Ga. 34 (1981); see also the specific provisions of OCGA §16-13-49(o)(4), and *Alford*, supra, at 245, 246.

(E) The specific pleading requirements and procedures set out in OCGA §16-13-49(o) make no provision for the filing of amended defensive pleadings outside of the time limits set out in subsection (o)(3), but rather provide that judgment *must* be granted to the State at the expiration of that period of time if a sufficient answer has not been filed. Allowing the amendment of defensive pleadings after the time period set out in the code section, pursuant to the general pleading provisions of the Civil Practice Act, would defeat the specific provisions of the code section and would be inconsistent with the legislative intent in enacting OCGA §16-13-49, to provide for the prompt disposition of property subject to forfeiture. *Alford*, supra, at 245, 246. The actions of claimant Dianne Melton, in filing her amendment on the eve of the hearing and serving the State with a copy thereof only minutes before the commencement of the hearing are an example of the abuses to which a contrary rule would be subject.

ON THE BASIS OF THE ABOVE FINDINGS, IT IS HEREBY ORDERED AND ADJUDGED THAT:

I. The State's Motion[s] for Judgement of Forfeiture and Disposition of Property as to Claimants Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock are GRANTED;

II. The State's Motion for Judgement of Forfeiture and Disposition of Property as to Claimant Diane Melton is DENIED;

III. The State's Motion[s] to Dismiss Defendant's Amended Answer to Complaint for Forfeiture Pursuant to OCGA §16-13-49, as to each amended answer, including that of Claimant Dianne Melton, is GRANTED.

IT IS THEREFORE THE ORDER OF THIS COURT THAT judgement of forfeiture is hereby granted in favor of the State as to all Defendant Property *in rem* claimed by Larry Jarrett, Wyman Jarrett, Karen Kramer and Steve Blalock, and said property is ordered forfeited as provided by law, to include all right, title and interest of said claimants in said property. The Sheriff of Jasper County, Georgia, is appointed receiver of said property, to maintain same until such time as this Court shall issue an Order of Distribution to be presented by the District Attorney.

SO ORDERED this 26th day of April, 1995.

/s/ William Prior
JUDGE OF SUPERIOR COURT
OCMULGEE JUDICIAL CIRCUIT

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: May 17, 1996

John F. Daugherty
GREER, KLOSIK & DAUGHERTY
4651-A Roswell Road, N.E.
Atlanta GA 30342

Case No. S96C1058

LARRY JARRETT ET AL. V. THE STATE

COURT OF APPEALS CASE NO. A95A1996

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sincerely,

Sherie M. Welch, Clerk

SUPREME COURT OF GEORGIA

Case No. S96C1058 Atlanta, June 14, 1996

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

LARRY JARRETT ET AL. V. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk.

[AMENDMENT V]

[Rights of Accused in Criminal Proceedings]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[AMENDMENT VIII]

[Bails, Fines, Punishments]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[AMENDMENT XIV]

Section 1.

[Citizenship Rights Not to Be Abridged by States]

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Georgia Constitution

Art. 1, § 1, ¶ 1 Life, liberty, and property.

No person shall be deprived of life, liberty, or property except by due process of law.

(Excerpts from transcript of testimony April 3, 1995)

"If the State's motion is granted, Judge, in this case that will not result in a forfeiture of all this property. We are asking their Answers be dismissed and that their Amendments be dismissed, but what will happen is if Your Honor grants the motions today, we will have to — we will suggest to the Court that we convene a distribution hearing under 16-1349 (u) (4) (C) . That section authorizes the Court to approve distribution of proceeds after a recommendation from the district attorney. We are going to ask for an evidentiary hearing at that time to come before the Court and put up evidence either from the investigators — investigation, GBI, financial investigative section is involved in this case, and others, but put up evidence ex parte to establish a basis for forfeiture of each item of property. Any item that we can't establish a basis for, Judge, will be returned, assuming that there is a rightful owner and a good claim as to property. And it will be at that time that the State will address the various *Thorp* factors. That will be in the distribution hearing."

"We will have to comply with *Thorp* at a later time . . . " and "[t]he State is not asking for forfeiture at this time. As I said before earlier, I think we will have to have an evidentiary hearing to show the basis for forfeiture of various items of property under *Thorp*. That can be scheduled at a later time. What we are doing right now is asking the Court to dismiss the Answers and dismiss the Amendments."